



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2956

Introduced 2/4/2014, by Sen. Dave Syverson

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-1.10

was 720 ILCS 5/12-18

Amends the Criminal Code of 2012. Provides that the prosecuting State's Attorney shall seek an order from the court to compel the accused to be tested for any sexually transmissible disease, including a test for infection with human immunodeficiency virus (HIV), within 48 hours: (1) after a finding at a preliminary hearing that there is probable cause to believe that an accused has committed criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child, or (2) after an indictment is returned charging an accused with criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child, or (3) after a finding that a defendant charged with criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child is unfit to stand trial where the finding is made prior to the preliminary hearing, or (4) after the request of the victim of criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child. Effective immediately.

LRB098 12948 RLC 47455 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 11-1.10 as follows:

6 (720 ILCS 5/11-1.10) (was 720 ILCS 5/12-18)

7 Sec. 11-1.10. General provisions concerning offenses
8 described in Sections 11-1.20 through 11-1.60.

9 (a) No person accused of violating Section 11-1.20,
10 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code shall be
11 presumed to be incapable of committing an offense prohibited by
12 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this
13 Code because of age, physical condition or relationship to the
14 victim. Nothing in this Section shall be construed to modify or
15 abrogate the affirmative defense of infancy under Section 6-1
16 of this Code or the provisions of Section 5-805 of the Juvenile
17 Court Act of 1987.

18 (b) Any medical examination or procedure which is conducted
19 by a physician, nurse, medical or hospital personnel, parent,
20 or caretaker for purposes and in a manner consistent with
21 reasonable medical standards is not an offense under Section
22 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code.

23 (c) (Blank).

1 (d) (Blank).

2 (e) The prosecuting State's Attorney shall seek an order
3 from the court to compel the accused to be tested for any
4 sexually transmissible disease, including a test for infection
5 with human immunodeficiency virus (HIV), within 48 hours:

6 (1) after ~~After~~ a finding at a preliminary hearing that
7 there is probable cause to believe that an accused has
8 committed a violation of Section 11-1.20, 11-1.30, or
9 11-1.40 of this Code, or

10 (2) after an indictment is returned charging an accused
11 with a violation of Section 11-1.20, 11-1.30, or 11-1.40 of
12 this Code, or

13 (3) after a finding that a defendant charged with a
14 violation of Section 11-1.20, 11-1.30, or 11-1.40 of this
15 Code is unfit to stand trial pursuant to Section 104-16 of
16 the Code of Criminal Procedure of 1963 where the finding is
17 made prior to the preliminary hearing, or

18 (4) after ~~at~~ the request of the ~~person who was the~~
19 victim of the violation of Section 11-1.20, 11-1.30, or
20 11-1.40. τ

21 ~~the prosecuting State's attorney shall seek an order from the~~
22 ~~court to compel the accused to be tested within 48 hours for~~
23 ~~any sexually transmissible disease, including a test for~~
24 ~~infection with human immunodeficiency virus (HIV).~~ The medical
25 tests shall be performed only by appropriately licensed medical
26 practitioners. The ~~Such~~ testing shall consist of a test

1 approved by the Illinois Department of Public Health to
2 determine the presence of HIV infection, based upon
3 recommendations of the United States Centers for Disease
4 Control and Prevention; in the event of a positive result, a
5 reliable supplemental test based upon recommendations of the
6 United States Centers for Disease Control and Prevention shall
7 be administered. The results of the tests and any follow-up
8 tests shall be kept strictly confidential by all medical
9 personnel involved in the testing and must be personally
10 delivered in a sealed envelope to the victim, to the defendant,
11 to the State's Attorney, and to the judge who entered the
12 order, for the judge's inspection in camera. The judge shall
13 provide to the victim a referral to the Illinois Department of
14 Public Health HIV/AIDS toll-free hotline for counseling and
15 information in connection with the test result. Acting in
16 accordance with the best interests of the victim and the
17 public, the judge shall have the discretion to determine to
18 whom, if anyone, the result of the testing may be revealed;
19 however, in no case shall the identity of the victim be
20 disclosed. The court shall order that the cost of the tests
21 shall be paid by the county, and shall be taxed as costs
22 against the accused if convicted.

23 (f) Whenever any law enforcement officer has reasonable
24 cause to believe that a person has been delivered a controlled
25 substance without his or her consent, the law enforcement
26 officer shall advise the victim about seeking medical treatment

1 and preserving evidence.

2 (g) Every hospital providing emergency hospital services
3 to an alleged sexual assault survivor, when there is reasonable
4 cause to believe that a person has been delivered a controlled
5 substance without his or her consent, shall designate personnel
6 to provide:

7 (1) An explanation to the victim about the nature and
8 effects of commonly used controlled substances and how such
9 controlled substances are administered.

10 (2) An offer to the victim of testing for the presence
11 of such controlled substances.

12 (3) A disclosure to the victim that all controlled
13 substances or alcohol ingested by the victim will be
14 disclosed by the test.

15 (4) A statement that the test is completely voluntary.

16 (5) A form for written authorization for sample
17 analysis of all controlled substances and alcohol ingested
18 by the victim.

19 A physician licensed to practice medicine in all its
20 branches may agree to be a designated person under this
21 subsection.

22 No sample analysis may be performed unless the victim
23 returns a signed written authorization within 30 days after the
24 sample was collected.

25 Any medical treatment or care under this subsection shall
26 be only in accordance with the order of a physician licensed to

1 practice medicine in all of its branches. Any testing under
2 this subsection shall be only in accordance with the order of a
3 licensed individual authorized to order the testing.

4 (Source: P.A. 96-1551, eff. 7-1-11; incorporates 97-244, eff.
5 8-4-11; 97-1109, eff. 1-1-13.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.